

# **EXHIBIT 2**



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Advertising Practices

September 30, 2005

*By Mail and Facsimile*

Al Pope, President and CEO  
Gene Gregory, Senior Vice President  
United Egg Producers  
1720 Windward Concourse  
Suite 230  
Alpharetta, Georgia 30005

**Re: Complaint Seeking Action Against the United Egg Producers for Deceptive Advertising in Connection with the "Animal Care Certified" Program**

Dear Messrs. Pope and Gregory:

On June 18, 2003, Compassion Over Killing ("COK") filed a complaint with the Federal Trade Commission asking the Commission to take action against the United Egg Producers' ("UEP") *Animal Care Certified* certification program. COK contends, among other things, that the *Animal Care Certified* (or "ACC") seal on egg cartons is misleading because it communicates a level of care and humane treatment for hens that is superior to the actual conditions permitted under the certification program.

The Commission staff also received a referral of this matter from the National Advertising Division of the Council of Better Business Bureaus ("NAD") on July 16, 2004. The NAD, and subsequently the National Advertising Review Board ("NARB"), on appeal, found that the ACC seal program was misleading in that consumers could reasonably interpret the seal to mean that the hens who laid the eggs sold in ACC-labeled cartons are accorded a more humane level of care than what is allowed by the UEP guidelines. The NARB recommended that the ACC seal program be discontinued in its present form or modified to more clearly communicate the specific standard of care afforded by the certification. The NAD referred the matter to the Commission upon its determination that the UEP had not taken sufficient steps to comply with the NARB final decision. The FTC strongly supports the NAD's self-regulatory program and encourages participants to adhere to the decisions of the NAD and the NARB.

You have informed us that, in response to concerns raised about the use of the *Animal Care Certified* logo, the United Egg Producers has developed a revised seal for its hen husbandry certification program that removes the reference to the term "Animal Care Certified." The new

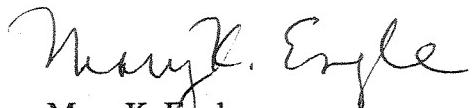
logo states, "United Egg Producers Certified.™ Produced in Compliance with the United Egg Producers Animal Husbandry Guidelines. [www.uepcertified.com](http://www.uepcertified.com)." The United Egg Producers also has informed Commission staff and the Division of Poultry Programs of the USDA Agricultural Marketing Service<sup>1</sup> that the revised *United Egg Producers Certified* seal will replace the *Animal Care Certified* seal on new egg cartons manufactured on or before November 30, 2005, and that all remaining egg cartons bearing the ACC logo will be removed from retail sale across the United States on or before March 31, 2006.

We believe that these changes directly address the deception identified in the NARB decision. For this reason, we find that no further Commission action is warranted in response to the petition filed by Compassion Over Killing.

Although the Commission staff has decided not to recommend enforcement action on Compassion Over Killing's complaint at this time, in cooperation with the USDA's Agricultural Marketing Service, we will continue to monitor UEP's use and advertising of the *United Egg Producers Certified* seal in the marketplace.

The staff's decision should not be construed as a formal Commission determination of whether the challenged actions comply with Section 5 of the FTC Act, and the Commission reserves the right to take any such future action that the public interest may require.

Very truly yours,



Mary K. Engle  
Associate Director  
Division of Advertising Practices

w/enclosures

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<sup>1</sup> At the Commission staff's request, the proposed new logo also has been reviewed by the Division of Poultry Programs of the USDA Agricultural Marketing Service. The Division of Poultry Programs has informed Commission staff that it finds the revised United Egg Producers Certified logo in accordance with USDA regulations pertaining to the grading of shell eggs, and "would approve the use of such a logo on shell egg labels, containers, or packaging materials bearing official identification in lieu of the current 'Animal Care Certified'™ logo, which is currently associated with the auditing services being provided under the program by Agricultural Marketing Services." See attached letter from Craig A. Morris, Deputy Administrator, Division of Poultry Programs.



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

Room 3932-S, STOP 0256  
1400 Independence Avenue, SW  
Washington, DC 20250-0256

September 22, 2005

Mary K. Engle  
Associate Director  
Division of Advertising Practices  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20001

Dear Ms. Engle:

This letter is to inform you that Poultry Programs of the USDA Agricultural Marketing Service has reviewed the submission by the United Egg Producers (UEP) to the Federal Trade Commission dated July 29, 2005. The UEP's submission proposes a revised marketing logo for its hen husbandry certification program that removes the reference to the term "Animal Care Certified," and instead states, "*United Egg Producers Certified™ Produced in Compliance with the United Egg Producers Animal Husbandry Guidelines.* [www.uepcertified.com](http://www.uepcertified.com)."

It is our belief that the proposed logo accurately represents that the seal program is conducted pursuant to guidelines established by UEP, and makes no representations that are likely to mislead consumers as to the program's requirements. The logo thus is in accordance with our regulations pertaining to the grading of shell eggs, which prohibit use of the USDA grade shield on egg packaging containing false or misleading labeling (7 CFR 56.35). Accordingly, we would approve the use of such a logo on shell egg labels, containers, or packaging materials bearing official identification in lieu of the current "Animal Care Certified™" logo which now appears in commerce.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Morris".

Craig A. Morris  
Deputy Administrator  
Poultry Programs



*Produced in Compliance with United  
Egg Producers Animal Husbandry Guidelines*

[www.uepcertified.com](http://www.uepcertified.com)